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Growing Pains for States' Online-Sales-Tax Plans

The Supreme Court last year allowed states to tax online retail sales. What kinds of sales, and how to tax them, remains a complicated question.

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In an article published on April 25, 2019 for the *National Journal*, Jennifer Karpchuk, senior counsel, shared insight discussing growing pains for states' online-sales-tax plans following the U.S. Supreme Court decision in *South Dakota v. Wayfair* on June 21, 2018.

The five-to-four decision in *Wayfair* allowed states to implement a tax on goods delivered to residents of a state despite the retailer not having a physical presence there. The decision prompted other states to consider adopting South Dakota's court-approved definition of what constitutes an online sale and the threshold for when participating retailers must start paying a sales tax.

Following the court's decision, states adopted legislation similar to South Dakota's, stating that businesses with more than \$100,000 in annual sales (or 200 transactions within the state) meet the threshold to collect and remit sales tax. "That was sort of the initial trend, to sort of flat-out adopt the South Dakota model," says Karpchuk. "As time went on, some states started to adopt an 'and' test, so the remote seller had to have both the monetary threshold and the transaction threshold in the state in order to have nexus."

As of April 2019, some states have abandoned the transaction requirement completely, while others are still unclear on the route they want to take. There may still be some pushback on states following the *Wayfair* decision, with the potential for companies to argue that the Interstate Income Tax Act of 1959 protects them from this type of taxation as it prohibits states from "imposing an income tax on companies if their activity is limited to soliciting business for the sale of tangible personal property," as Karpchuk explains.

"I think the biggest problem from the income-tax side that we are going to see are questions of how far [the Interstate Income Tax Act] is going to apply to a remote seller," Karpchuk says.

While it is unclear if the U.S. Congress will consider this issue following the *Wayfair* decision, a national standard and state consensus for online sales taxes could be on the horizon.

You may view the full article [here](#)